

Viacom Inc.
1515 Broadway
New York NY 10036-5794

Edward N. Schor
Vice President
Associate General Counsel/Regulatory

212 258 612

RECEIVED

JUL - 5 1996

Federal Communications Commission
Office of Secretary

VIACOM

July 2, 1996

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE WUPA(TV), Channel 69, Atlanta
Form 301 Modification Application

Dear Mr. Caton:

This is in reference to the FCC Form 301 application for modification of the broadcast facilities of commercial television station WUPA(TV), Channel 69, Atlanta, filed on June 28, 1996. In the cover letter accompanying that application, it was stated that a joint petition for issuance of a proposed rule making to exchange channels under Section 1.420(h) was being filed on the same date as the filing of the modification application and that a copy of the petition was attached to the application for ease of reference. Reference to the petition was also made in Section I of the modification application.

The joint petition seeking a channel exchange with noncommercial television station WATC(TV), Channel *57, Atlanta, was filed with the Commission on July 1, 1996. A copy of the petition is enclosed with this letter. Please associate the petition with the application. Exhibits 1 and 2 of the joint petition, which are copies of the WUPA(TV) modification application and of the WATC(TV) modification application (FCC Form 340), the latter of which was also filed on June 28, 1996, are omitted to avoid duplicative filings. However, copies of those exhibits will be provided to the staff upon request.

Very truly yours,



Enclosure



August 1, 1996
F. C. C.
1

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)
)
Amendment of Section 73.606)
Table of Allotments,)
Television Broadcast Stations)
(Atlanta, Georgia))

RECEIVED
JUL 1 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**JOINT PETITION FOR ISSUANCE OF NOTICE OF
PROPOSED RULE MAKING TO EXCHANGE CHANNELS**

Bechtel & Cole
1901 L Street, N.W.
Suite 250
Washington, DC 20036

Gene Bechtel
Counsel for Community Television Inc.

and

Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Suite 600
Washington, D.C. 20036

George Shapiro
Counsel for VSC Communications Inc.

June 28, 1996

RECEIVED

JUL - 5 1996

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.606)
Table of Allotments,)
Television Broadcast Stations)
(Atlanta, Georgia))

**JOINT PETITION FOR ISSUANCE OF NOTICE OF
PROPOSED RULE MAKING TO EXCHANGE CHANNELS**

Community Television Inc. (Community Television), permittee of noncommercial television station WATC(TV), Channel *57, Atlanta, Georgia, and VSC Communications Inc. (Viacom),¹ licensee of commercial television station WUPA(TV), Channel 69, Atlanta, Georgia, jointly file this petition for rule making. By this petition, Community Television and Viacom seek to exchange their channels and, pursuant to Section 1.420(h) of the Commission's Rules, request that the Commission initiate a rule making to amend the Table of Allotments by allotting Channel 57 to Atlanta as a substitute commercial channel for Channel 69 and by allotting Channel *69 to Atlanta as a noncommercial educational substitute for Channel *57

The proposal

In conjunction with the request for the channel exchange, Community Television and Viacom each request modification of their authorizations. Specifically, and contingent upon

¹VSC Communications Inc. is wholly owned by Viacom International Inc., which, in turn, is wholly owned by Viacom Inc. For ease of reference, VSC Communications Inc. shall be referred to as "Viacom."

Commission approval of the channel exchange, Community Television seeks to modify the permit of WATC(TV) to specify operation of newly reserved Channel *69 from the transmitter site and with the technical facilities currently authorized to Viacom's WUPA(TV) on Channel 69. See Exhibit 3, Community Television Form 340. Viacom, in turn, seeks to modify the license of WUPA(TV) to specify operation of newly dereserved Channel 57 from a new site, two blocks from its current location, and with new transmission facilities. See Exhibit 2, Viacom Form 301. Because the channel exchange will not be effectuated by the parties without these modifications, Community Television and Viacom request that the Commission expressly consider in the channel exchange rule making proceeding the specific modifications contained in their separate modification applications simultaneously filed with this petition.²

Under the terms of a letter agreement between the parties, and in consideration for the channel exchange, Viacom has agreed to assign to Community Television title to its Channel 69 transmission facilities and its transmission site lease agreement. As additional consideration, Viacom has agreed to pay to Community Television an as yet undetermined sum of cash, and has already paid \$20,000 to the noncommercial permittee as partial down payment thereof.

Governing rules and policy

Section 1.420(h) permits a licensee or permittee of a noncommercial television station and a licensee or permittee of a commercial television station to jointly petition for rule making to amend the Television Table of Allotments in order to exchange channels. After a notice-and-

² The Commission has in the past expressly considered in a channel exchange rule making proceeding a proposed authorization modification. See Amendment of Section 73.606(b) (Clermont and Cocoa, Florida), 4 FCC Rcd 8320, 8323 (Allocations Branch 1989), recon. denied, 5 FCC Rcd 6566 (1990), aff'd sub nom. Rainbow Broadcasting Co. v. FCC, 949 F.2d 405 (D.C. Cir. 1991). However, the proposed modification in that case involved a transmission site that implicated Section 73.685(a), the rule requiring city-grade signal coverage of the entire community of license of a television station. In contrast, the modifications sought by Community Television and Viacom necessitate no alternative technical studies or waivers. Indeed, Community Television seeks only to move to Viacom's authorized facility and Viacom seeks a nearby transmitter site and facilities which would be in full compliance with the Commission's technical rules. To facilitate the channel exchange process, including the proposed facilities modifications, on this date Viacom filed a Form 301 modification application and Community Television filed a Form 340 modification application (for noncommercial broadcast stations). Copies of these applications are attached as Exhibits 2 and 3.

comment period and upon approval of the requested exchange, the Commission amends the Table by reserving for noncommercial educational use the channel to be acquired by the noncommercial licensee or permittee and by dereserving the channel to be acquired by the commercial licensee or permittee. Under Section 1.420(h), noncommercial/commercial channel exchange proposals (1) must involve intraband channel changes, that is, either VHF channels or UHF channels, (2) must involve stations which serve "substantially the same market," and (3) must promote the public interest, convenience and necessity. See 47 C.F.R. §1.420(h). In addition, the noncommercial television station requesting approval of a proposed exchange is required to assure the Commission, in the course of the rule making proceeding, that any consideration flowing to the noncommercial station as a result of the exchange will be devoted to activities related to the operation of the noncommercial educational television station. See Intraband Television Channel Exchanges, 59 RR 2d 1455, 1464 (1986), recon. denied, 3 FCC Rcd 2517 (1988).

Compliance with Commission rules and policies

The channel exchange proposed by Community Television and Viacom is consistent with Section 1.420(h), as well as Commission policy relating to noncommercial/commercial television channel exchanges. First, the proposal involves two UHF channels, Community Television's Channel *57 and Viacom's Channel 69. Thus, the proposed channel exchange will be an intraband channel change, as required under the rule.

Second, both Community Television's WATC(TV) and Viacom's WUPA(TV) are designated to Atlanta, the same community of license. The two stations, therefore, serve "substantially the same market." Moreover, as required under Intraband Television Channel Exchanges, 59 RR 2d at 1464a, the community of license of each station will remain the same after the exchange has taken place. That is, both WATC(TV) and WUPA(TV) will continue to be licensed to Atlanta.

Third, the public interest benefits generated by the channel exchange proposal are numerous. Indeed, not only will the proposal enhance the overall noncommercial service offered by Community Television, operating from Channel *69, but it will also significantly augment the commercial service offered by Viacom, from UPN network-affiliated Channel 57, enabling a substantial number of viewers to receive both WUPA(TV) and UPN network programming over the air for the first time

The most significant benefit of the exchange will be the assured initiation of service by a second noncommercial television licensed to Atlanta. Since 1986, when the construction permit for Channel *57 was issued, the noncommercial station has remained non-operational. In 1993, Community Television acquired the permit for the unbuilt station, but was unable to complete construction at the previous permittee's site due to site unsuitability. Consequently, Community Television was required to find an alternate site and it did so, but on Sweat Mountain, approximately 30 miles north of Atlanta. See FCC File No. BMPET-950207KE.

Upon Commission approval of the various modifications and construction of Viacom's new Channel 57 facilities, therefore, the Community Television/Viacom channel exchange proposal will enable Community Television to simply occupy the current Viacom facilities and immediately commence operation of its noncommercial service to Atlanta from a site in downtown Atlanta. With the more central transmitter site and increased power on the Channel *69 facility, Community Television will reach 43 percent of the Atlanta DMA, five percent more than is possible as WATC(TV) is currently authorized. Thus, as was true in Amendment of Section 73.606(b)(Clermont and Cocoa, Florida), 4 FCC Red at 8321, in which the Commission approved the requesting parties' exchange proposal, the Community Television/Viacom exchange will permit a "vast expansion" of the noncommercial educational television service "that might not otherwise be implemented."

Further, upon Commission approval of the channel exchange, noncommercial station WATC(TV), operating on Channel *69 from the site and with the facilities currently used by

WUPA(TV) in its Channel 69 operation, will serve a geographic area 52 percent larger and a population 12 percent greater than it is predicted to serve with its present authorization. From its authorized, but as-yet unbuilt facility, Community Television is predicted to provide a Grade B signal encompassing 12,224 square kilometers and reaching 2,721,437 persons. The proposed channel exchange would enable Community Television to move right into a fully constructed and operational facility whose Grade B signal encompasses 18,585 square kilometers and serves 3,049,080 persons. Thus, 343,393 additional persons would be able to receive a Grade B signal from the modified WATC(TV) facility than could do so with the currently authorized WATC(TV) facility. Although 15,750 persons in an area about 85 kilometers north of Atlanta would lose WATC(TV) service with the proposed exchange, that loss is theoretical in that WATC(TV) has not as yet commenced operation. Nevertheless, the "loss" would be more than offset by the extensive "gain" area to the east, south and west of Atlanta, resulting in a net gain of 327,643 persons. It should also be noted that of the 15,750 persons losing WATC(TV), none would lose their only noncommercial television service in that they are now served by the Grade B signal of at least one or two other noncommercial stations

Moreover, while no area or person will receive a first or second Grade B noncommercial television broadcast service as a result of the proposed channel exchange, Community Television's enhanced Grade B signal will provide a third noncommercial service to 124,300 viewers.³ Given that it is Community Television's present intention to provide prime-time locally produced informational programming, as well as foreign language, religious and educational programming, an enhanced WATC(TV) signal will not be duplicative of other noncommercial services. Rather WATC(TV) will serve as a source of diversity with respect to noncommercial television programming fare.

³ The number of persons who would lose WATC(TV) as a second or third noncommercial service, therefore, is much smaller than the number of persons who would gain WATC(TV) as a third noncommercial educational service.

Finally, with respect to the public interest benefits linked to noncommercial television station WATC(TV), the consideration flowing to its permittee Community Television from the channel exchange, that is, the donation of Viacom's existing licensed facilities plus a sum of cash, will permit Community Television to initiate its noncommercial service and to serve more Atlanta-market viewers than it would otherwise would have been able to reach. These public interest benefits are precisely the objectives envisioned by the Commission when it adopted the channel-exchange procedure: "Noncommercial educational stations in particular may receive consideration for such exchanges that permit them to improve the quality of their facilities or even, in marginal cases, to initiate broadcast operations where it would otherwise not be possible." Intraband Television Channel Exchanges, 59 RR 2d at 1461. And, as required under the channel exchange policy, Community Television assures the Commission that it will devote all proceeds from the proposed exchange for the commencement and operation of its noncommercial television broadcast service with Viacom's existing licensed facility and for the acquisition and/or production of programming.

As for the public interest benefits emanating from the channel exchange with respect to the commercial UHF station involved, Viacom's WUPA(TV), operating from its proposed new site and with its new transmission facilities on Channel 57, will provide a Grade B signal encompassing 23,805 square kilometers and serving 3,225,098 persons.⁴ The proposed WUPA(TV) Grade B signal, therefore, will reach an additional 176,018 persons with no concomitant loss of service to any person currently receiving WUPA(TV) over the air.

The increased geographic Grade B coverage of WUPA(TV) will include 45 percent of the Atlanta DMA, two percent more than included now, thereby enabling the UHF commercial television service to better compete in the market. The Commission has expressly recognized that intraband channel exchanges are desirable not only because they may enhance the noncommercial station, but because they may also benefit the commercial station "in terms of more appropriate

⁴ Viacom has reasonable assurance for its new transmitter site. See Exhibit 2, Viacom Form 301 at Section VII.

site or service area location and through cost savings or financial advantages." Intraband Television Channel Exchanges, 59 RR 2d at 1461. "In all these instances," the Commission has concluded, "the public could ultimately benefit from either new or improved commercial and noncommercial service." See also Amendment of Section 73.606(b)(Clermont and Cocoa, Florida), 4 FCC Rcd at 8321 (citing the increased service by the commercial station as an additional public interest factor).

The augmented service of the commercial station resulting from the proposed exchange is particularly significant with respect to the Community Television/Viacom proposal due to WUPA(TV)'s affiliation with UPN, an emerging broadcast television network. Station WUPA(TV) is the only UPN network affiliate located in the Atlanta DMA. And, of the 176,018 persons scheduled to gain WUPA(TV) service after the exchange, almost all will be receiving their first UPN programming service over the air. Thus, not only will WUPA(TV), as modified, be in a better competitive position in the Atlanta DMA, thereby promoting economic competition, but it will also provide diverse programming to those persons able to view WUPA(TV) and UPN network programming over the air for the first time. Competition and diversity are bedrock principles in the Commission's public interest determinations and the proposal here promotes those objectives.

Conclusion

The channel exchange proposed by Community Television and Viacom complies in all respects with Section 1.420(h) and Intraband Television Channel Exchange, the Commission's policy underlying that rule. If approved, the exchange and the related technical modifications sought by the parties would result in a more competitive and diverse Atlanta market by initiating

WATC(TV)'s noncommercial television service and by enhancing WUPA(TV)'s commercial television service.

Respectfully submitted,

COMMUNITY TELEVISION INC.

By: _____
Gene A. Bechtel

Its Attorney

Bechtel & Cole
1901 L Street, N W
Suite 250
Washington, DC 20036

and

VSC COMMUNICATIONS INC.

By: _____
George Shapiro

Its Attorney

Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Suite 600
Washington, D.C. 20036

Exhibit 1

Proposed Channel Swap • Atlanta, Georgia

Statement of William F. Hammett, Consulting Engineer

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by VSC Communications Inc., licensee of TV Station WUPA Channel 69, Atlanta, Georgia, to evaluate the coverage improvements to be realized by its proposed channel swap with non-commercial educational TV Station WATC, Channel 57, Atlanta.

Background

TV Station WUPA currently operates (FCC File No. BLCT-810902KF) on Channel 69 with 2.630 kW peak visual effective radiated power from a site atop the Peachtree Plaza Hotel, 210 Peachtree Street, N.E., in Atlanta, providing an effective antenna height of 299 meters above average terrain.

TV Station WATC is currently permitted (FCC File No. BMPET-950207KE) for operation on Channel 57 with 1.740 kW peak visual effective radiated power with a directional antenna at an effective height of 319 meters above average terrain at a site atop Sweet Mountain, about 30 kilometers north of Atlanta.

Proposed Swap

The proposed swap of channels between WUPA and WATC has three integrated elements:

- 1) WUPA is assigned Channel 57 and WATC is assigned Channel 69
- 2) WATC receives the existing WUPA Channel 69 transmitting facilities in downtown Atlanta
- 3) WUPA constructs new Channel 57 transmitting facilities near its exiting Channel 69 site.

Improved Coverage

The visual service provided by both WATC and WUPA would be increased by the proposed swap. The coverage contours have been calculated in accordance with FCC Rules. Figure 1 attached shows the improvement for WATC by comparing the F(50,50) Grade B contours for the permitted and proposed operations. The area and population comparison is as follows:

	Grade B Area & Population*	
Permitted WATC	12,224 sq. km	2,721,437 persons (38% of Atlanta DMA)
Proposed WATC	18,585	3,049,080 (43%)
	+52%	+12%

* Based on those Census Blocks from 1990 U.S. Census whose centroids lie within the Grade B contour.



HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

Proposed Channel Swap • Atlanta, Georgia

As shown in Figure 1, there is an area about 85 kilometers north of Atlanta that the expanded WATC contour will not cover. That "loss" area is more than offset by the extensive "gain" area to the east, south, and west of Atlanta, as follows:

Grade B Area "lost"	945 sq. km	15,750 persons (1990 Census)
Grade B Area "gained"	7,306	343,393

Figure 2 attached shows the improvement to be realized by WUPA, with the area and population comparison as follows:

	<u>Grade B Area & Population*</u>	
Authorized WUPA	18,585 sq. km	3,049,080 persons (43% of Atlanta DMA)
Proposed WUPA	23,805	3,225,098 (45%)
	+28%	+6%

Non-Commercial Services

WATC is not now operating but, even if it were, there are no persons for whom WATC would be their only non-commercial educational visual service on the basis of the calculated Grade B contours from non-commercial educational TV stations in nearby areas. Specifically, the entire "loss" area shown on Figure 1 is within the Grade B contour of non-commercial educational Station WCLP, Channel 18, Chatsworth, Georgia. The following other non-commercial stations also cover part or all of the areas within the existing or proposed WATC Grade B contours:

<u>Call Sign</u>	<u>Channel</u>	<u>City of License</u>
WPBA	30	Atlanta, Georgia
WGTV	8	Athens, Georgia
WCIQ	7	Mount Cheaha, Alabama
WJSP-TV	28	Columbus, Georgia

When the Grade B contours of these stations are projected and examined together, there are no persons with only one non-commercial visual service. Of those persons with only two such services, the number who would lose WATC is much smaller than the number who would gain WATC as a third service:

Loss of one of two non-commercial services	22 sq. km	514 persons (1990 Census)
Addition of a third non-commercial service	2,187	124,300

* Based on those Census Blocks from 1990 U.S. Census whose centroids lie within the Grade B contour.



Proposed Channel Swap • Atlanta, Georgia

Conclusion

As shown above, both WATC and WUPA would expand their service of Atlanta, Georgia, to which they are allocated, and the surrounding areas by the proposed channel swap, facilities transfer, and construction. The relocation of WATC into downtown Atlanta from its permitted site to the north provides a significant improvement in service. Since WATC does not have existing transmitting facilities, its acquisition of the present WUPA transmitting facilities represents a particular benefit.

List of Figures

In carrying out these engineering studies, the following attached figures were prepared under my direct supervision:

1. Map showing improvement for WATC
2. Map showing improvement for WUPA.

June 28, 1996



William F. Hammett, P.E.

Affidavit

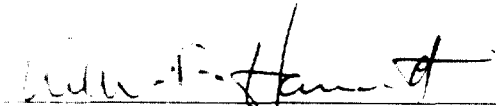
State of California

County of Sonoma

ss:


William F. Hammett, being first duly sworn upon oath, deposes and says:

1. That he is a qualified Registered Professional Engineer, holds California Registrations Nos. E-013026 and M-020676, which expire on June 30, 1997, and is a principal in the firm of Hammett & Edison, Inc., Consulting Engineers, with offices located near the city of San Francisco, California.
2. That he graduated from Dartmouth College with a degree in Engineering Sciences in 1977 and from the University of Illinois with a degree of Master of Science in 1978, has completed two years of employment by the Standard Oil Company and five years by Dean Witter Reynolds in various engineering, computer, and management capacities, and has been associated with the firm of Hammett & Edison, Inc., since 1985.
3. That the firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by VSC Communications Inc., licensee of TV Station WUPA, Channel 69, Atlanta, Georgia, to evaluate the coverage improvements to be realized by its proposed channel swap with non-commercial educational TV Station WATC, Channel 57, Atlanta.
4. That such engineering work has been carried out by him or under his direction and that the results thereof are attached hereto and form a part of this affidavit, and
5. That the foregoing statement and the report regarding the aforementioned engineering work are true and correct of his own knowledge except such statements made therein on information and belief and, as to such statements, he believes them to be true.


William F. Hammett, P.E.

Subscribed and sworn to before me this 28th day of June, 1996





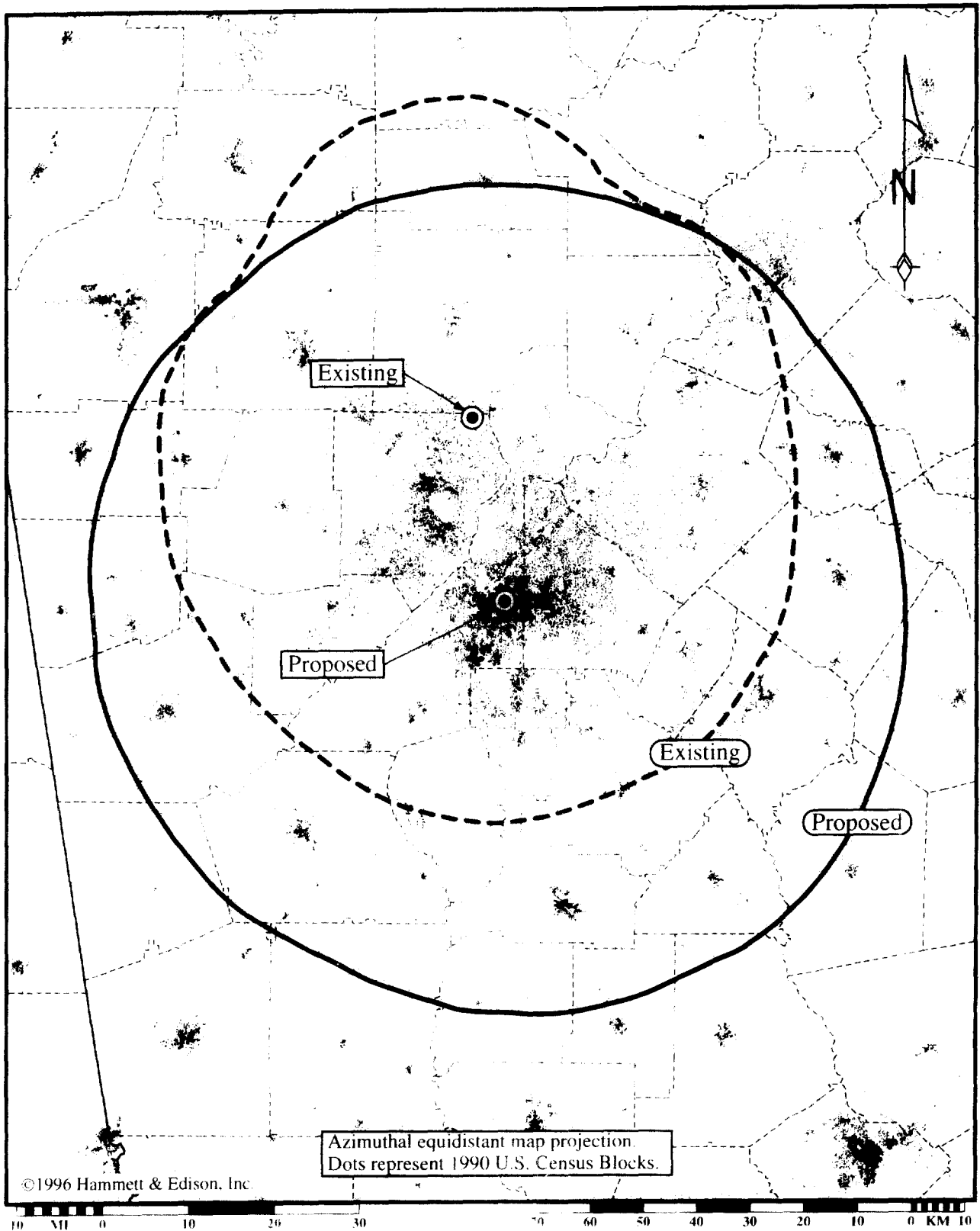


HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

960628
Affidavit

Proposed Channel Swap • Atlanta, Georgia

Grade B Contours TV Station WATC

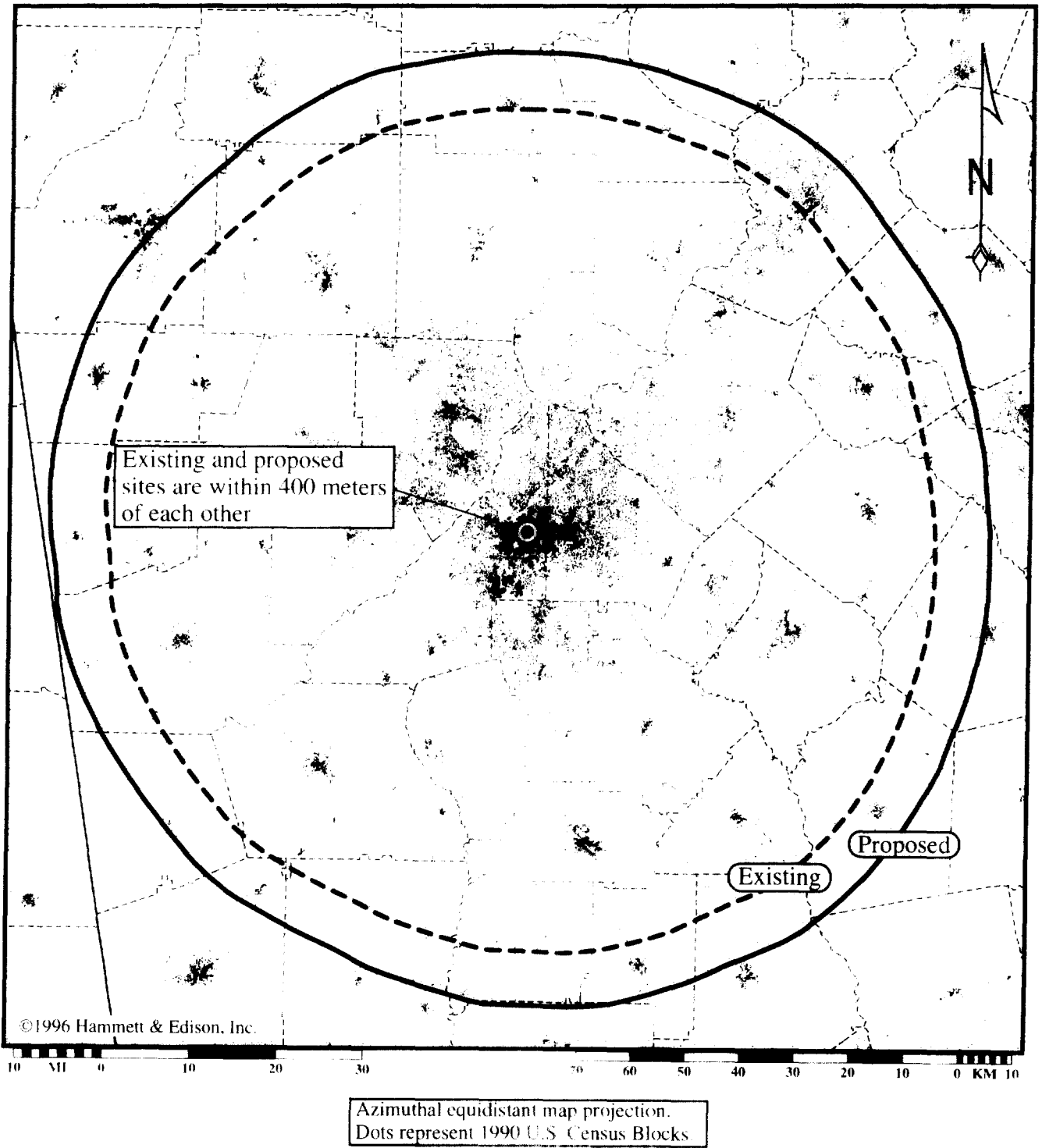


HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO, CA

960628
Figure 1

Proposed Channel Swap • Atlanta, Georgia

Grade B Contours TV Station WUPA



HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

960628
Figure 2